

*a***SIME BANK BHD****v.****MADAMUTHU PELANISAMY & ANOR***b*

HIGH COURT MALAYA, TEMERLOH
VT SINGHAM JC
[ORIGINATING SUMMONS NO: 24-126-89 (66-2000)]
24 JUNE 2000

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LAND LAW: *Sale of land - Public auction - Order for sale pursuant to an order of court - Purchaser failed to pay balance of purchase price within stipulated time - Application by purchaser for extension of time to pay balance amount - Whether purchaser entitled to extension of time to pay balance amount without service of application on both chargors and chargees - Whether both chargors and chargees had a right to be heard on application of purchaser to vary terms and conditions of the contract of sale to settle balance amount - Affidavit in support for extension of time - Whether disclosed sufficient ground for extension - National Land Code 1965, ss. 256, 257(1), 258(1)(a), 259(3)(a), 267(1)(a)*

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The applicant was proclaimed the successful bidder/purchaser at a public auction on 26 October 1999 pursuant to an order of court for sale. She paid 10% of the purchase price being RM1,820 and the balance amount was to have been paid within 90 days from 26 October 1999, *ie*, 26 January 2000. She did not settle the balance amount on that due date.

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By a summons-in-chambers dated 17 January 2000, the applicant sought leave of the court to extend the time to three months from the date of this order to be made to settle the balance amount. By her affidavit-in-support of the application, the applicant *inter alia* had stated that she had applied for loan from RHB Bank Bhd and that it was in the final stage of approval. Both the plaintiffs/chargees and the defendants/chargors were not present in court as they were not served with this application.

*g***Held:***h*

[1] In seeking the approval of this court to vary or alter the terms and conditions of the contract of sale by extending the time for payment of the balance purchase price, both the chargors and the chargees must be served with the application for the extension of time and they must be given the right to be heard. In this case, as the said application for extension of time had not been served on both the chargors and the chargees, the said application could not be considered.

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[2] The contract of sale could not be varied or altered without giving an opportunity to the chargors and the chargees to be heard as any extension of time granted to settle the balance purchase price due would amount to a variation of the terms and conditions of the contract of sale. There was also no sufficient evidence produced by the application on the status of the applicant's application to RHB Bank Berhad for a loan to settle the balance of the purchase price. a
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[Application dismissed followed by consequential order.]

Case(s) referred to:

Development & Commercial Bank Bhd – JB v. Kim Ming Choo [1991] 1 CLJ 732 (foll) c

Karupiah Chettiar v. Subramaniam [1971] 2 MLJ 116 (refd)

M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor [1994] 1 AMR 137 (refd)

Malayan United Finance Bhd v. Tan Loi Soon [1991] 1 MLJ 504 (refd)

Public Bank Berhad v. Phan Seng Kee & Ors [1991] 3 CLJ 2560 (refd) d

Siland Sdn Bhd & Anor v. M & J Frozen Food Sdn Bhd & Anor [1990] 2 MLJ 502 (foll)

Legislation referred to:

National Land Code 1965, s. 256(1)

Rules of the High Court 1980, O. 83 e

For the applicant - Rashdan Latif; M/s Halim & Ismail

Reported by Usha Thiagarajah

JUDGMENT

VT Singham JC:

Application By Purchaser - Bidder To Extend Time To Pay Balance Of Purchase Price

This was an application by summons in chambers dated 17 January 2000 by a successful bidder-purchaser seeking leave of this court to extend the time to three months from the date of this order to settle the balance of the purchase auction price in respect of a property known as H.S. (D) 3578, Lot No: 6938, Mukim Triang, Daerah Temerloh which came up for public auction on 26 October 1999. g
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Application By Chargees For Order For Sale

In this case, the plaintiffs/chargees Sime Bank Berhad previously known as United Malayan Banking Corporation Bhd had by originating summons dated i

- a* 1 November 1989 applied to this court for an order for sale of the said property charged under s. 256 of the National Land Code 1965 and read with O. 83 of the Rules of the High Court 1980. The defendants/chargors Madamuthu Pelanisamy and Saroja Sinnayah were at all material times the registered owners of the said property and had charged the said property to the plaintiffs by charge documents dated 6 August 1987 to secure a housing loan for the said property for RM18,000. As the defendants had breached the terms of the charge by failure to pay the monthly installments of the housing loan whereupon that accrued to the plaintiffs Sime Bank Berhad a right to sell the property and to realise the loan out of the proceeds of such sale.

c **Auction**

- Pursuant to the said application by the plaintiffs, for an order to sell the said property, the auction was conducted after several adjournments and finally on 26 October 1999, the applicant Panjavarnam K Sinnasamy was proclaimed the successful bidder at the auction and duly pronounced the purchaser at a price or RM18,200. The applicant paid a deposit of 10% being RM1,820 and the balance auction price was to have been paid within 90 days from 26 October 1999 which date was 26 January 2000. She did not settle the balance amount on the due date.

e **Affidavit Of Applicant To Extend Time To Pay Balance Of Purchase Price**

- By her affidavit which was affirmed on 13 January 2000 in support of the summons-in-chambers, the applicant *inter alia* had stated that she had applied for a loan from RHB Bank Berhad and she has been informed that it was in the final stage of approval. The applicant did not attach in her affidavit any documents, firstly, to support or to show to this court that she had made such an application for a loan from RHB Bank Berhad secondly, any letter from RHB Bank Berhad to confirm her said application for a loan had been received or that her application was in the final stage of approval as stated in her affidavit or that the applicant's application will be approved and if so, the date of approval. The applicant did not attach to her affidavit a copy of the memorandum of contract which she had executed when she had paid the 10% deposit sum of RM1,820 to show whether the conditions of the memorandum of contract had provided for any consequential relief for such failure to settle the balance auction price on the due date before 26 January 2000.

h **Counsel For Applicant**

- The applicant's counsel who attended this court on 6 June 2000 to apply for the extension of time for three months to settle the balance purchase price had on question by this court frankly admitted, that firstly, there was no letter addressed to the Registrar, High Court Temerloh of the applicant intention to

pay the balance purchase price and his intended application for extension of time. He said that there was also no letter from RHB Bank Berhad to confirm the applicant's application for the said loan or any confirmation from the RHB Bank Berhad if the application will be approved. He further said there was also no evidence whether the summons-in-chambers dated 17 January 2000 was served on the plaintiffs and the defendants as the applicant's counsel had merely stated that the application was posted on 11 May 2000 by courier service to the defendants/chargors but there was no proof of acknowledgment from them. He also did not inform the court if the plaintiffs/chargees were served with this application. Both the plaintiffs/chargees and the defendants/chargors were not present in court on 6 June 2000.

Held

In rejecting the application of the applicant purchaser of the said property to extend time to three months for payment of the balance purchase price, this court finds that:

- [1] in seeking the approval of this court to vary or alter the terms and conditions of the contract of sale by extending the time for payment of the balance purchase price, both the chargors and the chargees must be served with this application for the extension of time and they must be given the right to be heard;
- [2] in this case, as the said application for extension of time had not been served on both the chargors and the chargees, the said application cannot be considered;
- [3] there were insufficient material or evidence produced before this court as to whether the applicant's claim or averment that she had applied to RHB Bank Berhad for a loan was genuine and at what stage was her application with the bank for approval. Although her application to this court was made as early as January 2000 and yet there was no information to this court on the progress of her purported application to RHB Bank Berhad for a loan;
- [4] this application for extension of time to settle the balance purchase price ought to have been served on both the plaintiffs/chargees and the defendants/chargors for which there was no evidence before this court.

In addition to the service of this application on both the chargees and chargors and in order for this court to consider such an application, the applicant must at least produce some basic evidence and which ought to have been exhibited in her affidavit *ie*:

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- a* (a) the memorandum of contract which the applicant had executed on payment of the 10% of the purchase price,
- (b) her ability to settle the balance purchase price on/before the extended time sought,
- b* (c) documentary proof of her application for a loan to RHB Bank Berhad and a letter from the bank confirming such an application was received and the chances of the loan being approved to the applicant.

c In this case, there was no such evidence or material produced before this court. Accordingly, the applicant's application for extension of time for three months was dismissed and this court made the following consequential orders:

- [1] the deposit of RM1,820 be forfeited in favour of the plaintiffs/chargees towards the account of the defendants/chargors;
- d* [2] the property be resold;
- [3] the parties be at liberty to apply.

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